IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6697 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K. KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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HRISHIKESH MADHUSUDAN VAIDYA

Versus

STATE OF GUJARAT

Appearance:

MR MB Gandhi for Petitioner

M/S HH Patel for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K. KESHOTE

Date of decision: 09/03/2001

ORAL JUDGEMENT

Heard learned counsel for the parties and perused

the list of events and written arguments as well as xerox copies of the judgements submitted by the learned counsel for the petitioner as also the affidavit-in-reply to the Special Civil Application filed by the respondents.

2 In this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:-

(1) For a declaration that reversion of the petitioner from the post of Inspector to the post of Sub-Inspector in July 1962 was illegal and that the petitioner was entitled to be promoted to the post of Inspector of Police on 14th November 1960; alternatively, in any event, on 22.8.1961 when the petitioner was actually promoted to the post of Inspector of Police, to accord promotion to the petitioner to the post of Deputy Superintendent of Police and also for all consequential seniority and promotion to the higher cadre of Deputy Superintendent of POlice and Superintendent of Police and to pay the petitioner all consequential benefits including seniority, difference of pay and allowances.

(2) For a declaration that the petitioner is entitled to HRA at Ahmedabad during his periord of suspension from 1.7.1975 to 14.10.1979 and further for the period from 15.10.1979 to 15.9.1982;

(3) For a declaration that the petitioner is entitled to Transfer TA etc from Lakhpat to Ahmedabad and also Uniform Allowance permissible to the petitioner during the block period ending with 14.10.1979.

3 The facts of the case are that the petitioner on being selected joined as Police Sub-Inspector in the State of Bombay on 6th July 1947. After passing the Course of PTC he was appointed on 25th April 1949 as Sub-Inspector of Police. In the year 1951 on account of good performance and clean record of service he was confirmed in the cadre of Police Sub-Inspector. On 22.8.1961 the petitioner was promoted in due course as Inspector of Police by the I.G. of Police, Gujarat State, and was joined as P.I., Navrangpura Police Station, in Ahmedabad City. On 24th July 1962 the petitioner was reverted to his substantive post of PSI without giving any reasons or giving any opportunity of

being heard. He obeyed the order of reversion and joined duties at Junagadh District as PSI on 6.8.1962. The petitioner made several representations during the period from 1962 to 1973 against his reversion order but none has been responded by the respondent. On 26.2. 1973 the petitioner sent a statutory notice u/s 80 of the Civil Procedure Code for promotion with retrospective effect and consequential benefits. On 23.4.1973 the petitioner was promoted as Police Inspector and was posted as Home Inspector, Baroda Rural, and question of deemed date of promotion was under consideration, as reported. In the month of June 1974 the petitioner was transferred to Ahmedabad Rural District and was posted as Circle Police Inspector, Dhandhuka. On 26.01.1975 a gambling raid was carried out at Dhandhuka Town. The petitioner submitted that due to political pressure the case was not charge-sheeted before the Judicial Magistrate. The then District Superintendent of Police, Shri C.M. Thakkar was asked to inquire into the matter who found the raiding officer not guilty. On 12.2.1975 the petitioner was transferred from Dhandhuka to Lakhpat in Kutch District as Border Police Inspector. Even though the petitioner was transferred to a remote place, the I.G.P. placed the petitioner under suspension pending departmental enquiry with his H.Q. at Lakhpat. On 1st July 1975 the petitioner made a representation to I.G.P. to fix his headquarter at Ahmedabad where his family remembers reside. It is submitted that no reply was given and no charge sheet was served and therefore he came back to Ahmedabad. In May 1976 the petitioner approached this Court by filing Special Civil Application No.735 of 1976. On 6th May 1976 on an undertaking that a chargesheet will be served within 15 days from 6.5.1976 and departmental enquiry will be completed within six months from 6.5.1976, said petition was withdrawn by the petitioner. On 25.6.1976 the chargesheet was issued by Dy.IGP (GR), Gandhinagar, who was stated to be not empowered to issue the charge sheet as the petitioner was appointed by I.G. of Police. In the year 1977 the petitioner filed another petition being Special Civil Application No.69 of 1977 as the departmental enquiry was not completed within six months, as promised. But that petition was also withdrawn. On 12.10.1979 the petitioner was ordered to be reinstated and was posted in the office of CID, GS (IB), Ahmedabad, where he joined the duties as Police Inspector on 15.10.1979. Thus, the petitioner as per his own case remained under suspension for the period from June 1975 to 15.10.1979.

4 The departmental enquiry was over on 7.12.1983

and the petitioner was exonerated in respect of all the charges made against him and the period of suspension was treated on duty. On 31.12.1983 the petitioner came to be retired after attaining 58 years of age. It is the case of the petitioner that on 3.2.1984 the Director General of Police and I.G. of Police, Gujarat State, Ahmedabad, clarified the order dated 7.12.1983 and directed that on exonerating the petitioner in respect of all the charges in the chargesheet, he should be treated to be on duty for all purposes during the period he was under suspension and directed to pay him admissible pay and allowances after deducting the pay and allowances paid to him during his period of suspension.

5 The petitioner submitted that he is legally entitled to all due promotions with deemed date as Police Inspector with effect from 22.8.1961 when he was actually promoted as Police Inspector and the order of reversion was void ab-initio as being against the principles of natural and secondly his junior was retained as inspector. In the meantime what the petitioner stated that a junior Police Inspector, Shri V.R. Chudasama, came to be further promoted to the higher post of Dy.S.P. on 28.4.1966 and since his case was not taken into consideration he could not be promoted to the post of Dy. S.P. His entire period of suspension is treated as continuous service for all purposes and in the departmental enquiry he was also given a clean chit and therefore he is entitled for the promotion to the post of Dy.S.P. The case of Shri R.B.Pathak and other junior officers have been referred to who are stated to have been promoted to the higher post of Dy.S.P. Hence, this petition.

6 The petitioner retired from service on reaching the age of superannuation in December 1983 and three years thereafter the petitioner filed the present petition for the aforesaid reliefs.

7 The petitioner has made reference to many judgements of this Court to support his claim of deemed date of promotion to be given to the petitioner. There cannot be any quarrel with the proposition as laid down by this Court. It is also equally true and the Court has all the power to give directions to the respondent to give deemed date of promotion to the person who has illegally been superseded. In this case the petitioner is claiming the deemed date of promotion from 14.11.1960 or in the alternative from 22.8.1961, the actual date of his promotion to the post of Inspector of Police. This claim of the petitioner cannot be accepted as it has no

merits whatsoever. The petitioner as per his own case was superseded in the matter of promotion on 14.11.1960 when his junior Shri V.R. Chudasma was promoted to the post of P.I. The cause of action to challenge this action of the respondent arose in the year 1960 itself. This claim which is made after a period of 23 years cannot be granted now. From the list of events which has been supplied by the petitioner I do not find anything that against this alleged supersession in the matter of promotion he has made any grievance to the department. The petitioner was promoted to the post of PI on 22.8.1961. The petitioner has not produced the copy of the order of his promotion dated 22.8.1961. The respondents in reply to the special civil application stated that the relevant record is not available and they are not in a position to say the reasons for the promotion of the petitioner to the cadre of Police Inspector effective from 22.8.1961. Be that as it may, the burden lies on the petitioner to prove that in the year 1961 he has been given regular promotion after he having been found to be suitable by the Departmental Promotion Committee. In the absence of this proof, it has to be taken that the petitioner would have been promoted only on ad hoc basis in the year 1961. Moreover, the petition suffers from vices of gross delay, acquiescence and laches. As a result of this discussion, the prayer made by this petitioner deserves no acceptance. The so called juniors of the petitioner were promoted to the higher post much earlier to the present petitioner and naturally on the basis of their seniority in the higher post, they would have got higher post thereafter.

8 There is yet another ground on which this claim of the petitioner for deemed date of promotion cannot be accepted. The petitioner has issued a notice under Section 80 of the Civil Procedure Code on 26.2.1973 for promotion with retrospective effect and consequential benefits. Even thereafter the petitioner has not filed Civil Suit which goes to show that he does not want to challenge his reversion as well as his claim for deemed date of promotion. After giving the notice in case the petitioner really interested to get these benefits, he has to file the suit within limitation but that has not been done. When this relief has become barred by the limitation, now the petitioner has filed this petition also after his retirement and this relief cannot be granted. This is a case where not only the petitioner has not challenged his order of reversion and nor prayed for deemed date of promotion by filing a suit but has filed this petition also after three years from the date

of his retirement. Thus, there is gross delay in filing the petition and the Court would not consider this petition on merits.

9 So far as the second prayer made by the petitioner against recovery of HRA for the period from 1.7.1975 to 14.10.1979 is concerned, it is pointed in the affidavit-in-reply that during the aforesaid period of suspension the petitioner's headquarter was at Lakhpat. The petitioner was required to stay at the Headquarters during the period of suspension and the petitioner's application for change of headquarters was rejected by the order dated 6.9.1975. It is not the case of the petitioner that his Headquarter is changed from Lakhpat to Ahmedabad. Still the petitioner resided at Ahmedabad. This action of the petitioner is serious one and in fact it is a grave and serious misconduct. He has to remain at the headquarter and if on his own came to Ahmedabad, amounts to disobedience of the orders of the superior officers. It is unfortunate that this aspect is not noticed by the respondent otherwise, for this conduct of the petitioner, he could have been chargesheeted and appropriately punished. When the petitioner's headquarter was not changed to Ahmedabad and he on his own chose to remain at Ahmedabad, he is not entitled for HRA. This is a case where the petitioner wants to take the benefit of his own wrong. I find sufficient justification in the approach of the respondent that in view of the provisions of Rule 151 of BCSR and note 2 below the said Rule, the petitioner was not entitled to receive HRA for the aforesaid period. This note 2 below the aforesaid Rule clearly bars the claim of the petitioner and it cannot be accepted.

10 So far as claim of the petitioner for house rent for the period from 15.10.1979 to 15.9.1982 is concerned, it is also wholly frivolous and misplaced. As per existing government policy at the relevant time the government officers whose services were likely to be required at any time were offered rent-free residential accommodation. As per that policy if those officers who are offered rent-free accommodation refuse to occupy same and choose to reside in their own accommodation were not entitled to draw HRA in lieu of rent-free accommodation. As per the nature of the duties of the petitioner and his pay, he was entitled to rent-free accommodation of category-II. Accordingly, the residential quarter was allotted to the petitioner at Ahmedabad which he refused to occupy and chose to reside in his own house. So, as per the existing policy at that time the petitioner was not entitled for any HRA as he has refused to occupy the

rent-free accommodation allotted to him. It is true that the policy under that GR was changed and now it is decided to grant HRA in lieu of rent-free accommodation with effect from 16.10.1982. This policy has come into force after 15.12.1982 and it is of little help to the petitioner. Otherwise also I find that the petitioner has never raised any dispute regarding grant of HRA in lieu of rent-free accommodation prior to 16.12.1982. This claim of the petitioner also suffers from delay and laches.

12 As regards the petitioner's claim for transfer travelling allowance from Lakhtar to Ahmedabad in the year 1979 the aforesaid claim made by the petitioner also suffers from gross delay, acquiescence and laches. Even otherwise, it is pointed out in the affidavit-in-reply that the petitioner's headquarter during the period of suspension was at Lakhpat for the period from 1.7.1975 to 14.7.1979 and upon revocation of the said order of suspension petitioner was reinstated in service and was posted at Ahmedabad with effect from 15.10.1979, but the petitioner had not actually travelled from Lakhpat to Ahmedabad for reporting for duty at his place of posting as the petitioner was already residing at Ahmedabad and therefore the petitioner was not entitled to receive transfer travelling allowance.

This decision of the respondent also cannot be said to be arbitrary or perverse so as to warrant interference of this Court under Article 226 of the Constitution.

13 As regards the petitioner's claim for uniform allowance for the block period ending on 14.10.1979, here also apart from delay, laches and acquiescence it is pointed out in the affidavit-in-reply that uniform allowance is required to be paid only to the officer who is on duty. During the period of suspension the petitioner was not required to put on uniform and therefore there was no question of paying any uniform allowance for the block period ending on 14.10.1979. This decision of the respondents also cannot be said to be arbitrary or perverse.

14 There is no substance in any of the contentions raised in the petition. The petition is therefore dismissed. Rule is discharged. The petitioner is directed to pay Rs.1000/- as costs of this petition to the State of Gujarat.

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